IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3716 OF 1999.

Dr.Ram Tuljaram Shahani. ... Petitioner.

V/s.

Kalyanji Virji Shah (since
deceased through legal heirs)

1(a). Sakarbai Kalyanji Shah,

1(b). Chandrakant Kalyanji Shah,

1(c). Ramesh Kalyanji Shah,

1(d). Dinesh Kalyanji Shah,

1(e). Vijay Kalyanji Shah,

1(f). Rajesh Kalyanji Shah,

2. Anandji Virji Shah. ... Respondents.

Petitioner in person.

None for the respondents.

CORAM: V.C.DAGA, J.

DATED: 15th December 2005.

ORAL JUDGMENT :

. This petition filed under Article 227 of the Constitution of India takes exception to that part of the judgment and order dated 10/11th February, 1999; to the extent it restrains the petitioner from parting with the possession of the suit premises i.e. Flat No.27, Vimal Mahal,

Dr.G.Deshmukh Marg, Peddar Road, Mumbai- 400 026 by inducting third party interest in it and/or by creating any lease, assignment in any manner whatsoever.

Factual Matrix :
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2. The factual matrix, in short compass, is that the petitioner filed eviction suit against his tenants Shri Kalyanji Virji Shah and Shri Anandji Virji Shah in the Small Causes Court. The suit came to be decreed. Not being satisfied with the decree, the tenants/ original defendants preferred appeal before the Division Bench of the Small Causes Court. The appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal. However, while dismissing appeal, the appellate Court put condition in its order, which reads as:

> " The Respondent No.1 and 2 should use and enjoy the possession of the suit premises by themselves and their family members after recovering the possession and restrained from parting with the possession of the said premises by inducting third person in it by creating any lease, assignment or sell or in any other manner."

3. The above condition, put by the appellate Court, is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

4. The petitioner - Dr.R.T.Shahani appeared in person. Respondent No.1, who has expired, is represented by his legal heirs.

Submissions :
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5. Heard Dr.Shahani appearing in person. None for the respondents in spite of service.

6. The grounds of challenge are that the impugned condition could not have been put by the appellate Court without there being any prayer by either of the parties. That there is no such power in the appellate Court muchless in any Court to pass such order restraining any property holder from using his property in accordance with law, especially, while confirming the decree for eviction and possession against the tenant. Dr.Shahani submits that the impugned condition is liable to be set aside.

Consideration :
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7. Having heard Dr.Shahani, one has to conclude that the impugned condition, which is put by the appellate Court while confirming the judgment and decree passed by the trial Court, is unwarranted and beyond the scope of the powers of the appellate Court. The same is unsustainable in eye of law. Needless to mention that the impugned condition being illegal and unwarranted, the same is liable to be quashed and set aside.

8. Dr.Shahani, the petitioner submits that he has already received possession of the suit premises and he is in possession thereof. The submission made is taken on record.

9. In the result, the impugned condition put by the appellate Court (extracted in para-2 supra) is quashed and set aside. The petition is allowed to this extent. Rule is made absolute with no order as to costs.

(V.C.DAGA, J.)